

Message Text

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71-62

ACTION PM-04

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TO SECSTATE WASHDC 8078

INFO USERDA HQ WASHDC

USERDA HQ GERMANTOWN 7567

C O N F I D E N T I A L IAEA VIENNA 7567

DEPT PASS IO/SCT

E.O. 11652: GDS

TAGS: TECH, PARM, IAEA

SUBJECT: IAEA DRAFT FULL-SCOPE SAFEGUARDS AGREEMENT
FOR NON-NPT STATES

REF: STATE 212616

1. SUMMARY. MISSION HAS RECEIVED LATEST
SUBJECT DRAFT AND HAS POUCHED COPIES. MISSION'S
PRELIMINARY COMMENTS ON DRAFT ARE PROVIDED.
END SUMMARY.

2. MISSION HAS RECIEVED FROM IAEA LATEST
SECRETARIAT DRAFT, DATED 25 AUGUST 1976, OF
FULL-SCOPE SAFEGUARDS AGREEMENT FOR NON-NPT
STATES. THIS VERSION INCORPORATES CHANGES
RESULTING FROM UK COMMENTS ON EARLIER DRAFT.
COPIES HAVE BEEN POUCHED TO OES (KRATZER),
ACDA (VAN DOREN) AND ERDA (AMMONS). MISSION
UNDERSTANDS FROM IAEA (D.A.V. FISCHER)
THAT SECRETARIAT WILL TAKE COPIES OF THIS
DRAFT TO RIO AND THE DG IN HIS GENERAL
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CONFERENCE SPEECH PLANS TO MENTION AGENCY'S

WILLINGNESS TO CONSULT WITH ANY STATE INTERESTED
IN CONSIDERING ACCEPTANCE OF FULL-SCOPE SAFEGUARDS.

3. DRAFT AGREEMENT IS IDENTICAL TO INFCIRC/153
IN MOST OF ITS ARTICLES. THE DIFFERENCES REFLECT
THE NON-NPT STATUS OF A STATE ENTERING INTO THE
AGREEMENT; THE INCORPORATION OF SOME OF THE
SUPPLIER STATE CONDITIONS APPEARING IN RECENT
INFCIRC/66 TYPE AGREEMENTS, E.G., ARTICLE 14 ON
PHYSICAL PROTECTION; THE OBJECTIVE OF THE AGENCY
TO ENSURE THAT THIS AGREEMENT WOULD NOT APPEAR
MORE ATTRACTIVE TO STATES CONSIDERING THE CHOICE OF
THIS AGREEMENT AS OPPOSED TO ADHERING TO NPT; AND
THE DESIRE OF THE AGENCY TO INCLUDE SOME PROVISIONS
IN THE DRAFT AGREEMENT THAT WOULD PROVIDE THE
AGENCY WITH NEGOTIATING FLEXIBILITY FOR AT LEAST
THE FIRST SUCH AGREEMENT COMING BEFORE THE BOARD
FOR ITS APPROVAL.

4. MISSION BELIEVES DRAFT CONTAINS NUMBER OF MAJOR
DEFECTS AND SOME MINOR ONES, MOST OF WHICH RESULT
FROM DESIRE TO GO BEYOND INFCIRC/153 BY BRINGING
FACILITIES, SPECIFIED EQUIPMENT, SPECIFIED MATERIAL
AND RELEVANT TECHNOLOGICAL INFORMATION WITHIN SCOPE
OF AGREEMENT. FOR EXAMPLE, AS NOTED IN
PARA 3.A REFTEL, ARTICLE 12 SPECIFIES CERTAIN
CONDITIONS THAT MUST BE MET IF THE STATE
CONCERNED INTENDS TO TRANSFER SUCH ITEMS OUTSIDE
THAT STATE, BUT FAILS TO INCLUDE ANY MENTION OF
SUCH ITEMS IN THE DETAILED INTERNATIONAL TRANSFER
PROVISIONS IN PART II OF THE AGREEMENT (ARTICLES
91-96). IN ADDITION, EXCEPT FOR REFERENCES TO
FACILITIES, THERE IS NOTHING MENTIONED IN THE
PROVISIONS IN PART II SPECIFYING THE DETAILS OF
THE REPORTS SYSTEM (ARTICLES 59-69) ABOUT SUCH
ITEMS, AND THE SAME IS TRUE WITH RESPECT TO THE
PROVISIONS IN PART II REGARDING INSPECTIONS
(ARTICLES 70-89). FURTHER, WITH RESPECT TO
FACILITIES, THERE IS NOTHING IN ARTICLE 76 WHICH
SPECIFIES ACCESS WHICH INSPECTORS CAN HAVE TO
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FACILITIES NOT RPT NOT CONTAINING NUCLEAR MATERIAL.
IN THIS CONNECTION, THERE IS ALSO LACK OF PRECISION
AS TO WHAT VERIFICATION AND ACCESS RIGHT INSPECTORS
WOULD HAVE FOR FACILITIES BETWEEN
TIME AGENCY OBTAINS DESIGN INFORMATION AND
TIME FIRST NUCLEAR MATERIAL ACCOUNTING REPORT IS
RECEIVED BY AGENCY. MOREOVER, IN PRACTICE WE
UNDERSTAND AGENCY HAS SOMETIMES RECEIVED DESIGN

INFORMATION ON FACILITIES RATHER LATE, I.E. AFTER CONSTRUCTION HAS BEEN COMPLETED BUT BEFORE DECLARED NUCLEAR MATERIAL HAS BEEN INTRODUCED INTO FACILITY, WHICH LEAVES AGENCY IN SITUATION OF NOT RPT NOT BEING ABLE TO VERIFY WHETHER OR NOT RPT NOTUNDECLARED NUCLEAR MATERIAL MIGHT HAVE BEEN USED IN FACILITY PRIOR TO SUBMISSION OF DESIGN INFORMATION AND LISTING ON INVENTORY. BELIEVE TIMEING OF SUBMISSION OF DESIGN INFORMATION SHOULD BE TIGHTENED UP IN AGREEMENT ITSELF RATHER THAN LEFT TO SUBSIDIARY ARRANGEMENTS PER ARTICLE 42. FINALLY, THERE IS NOTHING IN ARTICLE 26 (TERMINATION) PROVIDING FOR CONTINUED SAFEGUARDS ON NUCLEAR MATERIAL PRODUCED, USED OR PROCESSED AFTER TERMINATION BY OR THROUGH USE OF SPECIFIED MATERIAL OR EQUIPMENT (OTHER THAN FACILITIES) IMPORTED PRIOR TO TERMINATION.

5. FOLLOWING ARE SPECIFIC COMMENTS ON TEXT:

A. ARTICLE 8(A). IF THE AGENCY IS TO SAFEGUARD FACILITIES PER SE, THEN THE AGENCY NEEDS DESIGN INFORMATION RELEVANT TO THE SAFEGUARDING OF THE FACILITY AS WELL AS THE NUCLEAR MATERIAL IN IT.

B. ARTICLE 12(B) THIS PARAGRAPH WOULD SEEM TO REQUIRE THE ADDITION OF PROVISIONS TO ARTICLES 92-94 TO NOTIFY THE AGENCY OF INTENDED TRANSFERS OF RELEVANT TECHNOLOGICAL INFORMATION (ARTICLE 98.Q) OUT OF THE STATE.

C. ARTICLE 12(C). BRACKETS ON THIS SENTENCE HAVE BEEN REMOVED AND THE SENTENCE HAS BEEN REWORDED TO COVER ANY TRANSFERS. MISSION AGREES CONFIDENTIAL

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WITH ADDITION OF SENTENCE PROPOSED IN PARA 3B OF REFTTEL BUT NOTES THAT THE CURRENT DRAFT AGREEMENT, BEING MODELED AFTER INFCIRC/153 RATHER THAN INFCIRC/66, CONTAINS NONE OF THE INFCIRC/66 PROVISIONS FOR ESTABLISHING AND MAINTAINING INVENTORIES OF IMPORTED FACILITIES, SPECIFIED EQUIPMENT OR SPECIFIED MATERIAL. SEE, FOR EXAMPLE, ARTICLE 5 OF INFCIRC/239, THE FRENCH/PAKISTAN TRILATERAL.

D. ARTICLE 26. THIS ARTICLE APPLIES TERMINATION PROVISIONS ON IMPORTED NUCLEAR MATERIAL AND FACILITIES OF RECENT TRILATERAL SAFEGUARDS AGREEMENTS TO ALL NUCLEAR MATERIALS AND FACILITIES WHETHER IMPORTED OR PRODUCED INDIGENOUSLY. THE 25-YEAR MINIMUM DURATION IS MORE STRINGENT THAN RECENT TRILATERALS ONLY WITH

RESPECT TO INDIGENOUS NUCLEAR MATERIALS AND FACILITIES.
AS DISCUSSED IN PARA 4, THIS ARTICLE DOES NOT PROVIDE
FOR THE CONTINUATION OF SAFEGUARDS ON NUCLEAR MATERIAL
DERIVED FROM IMPORTED SPECIFIED MATERIAL AND EQUIPMENT
EXCEPT TO THE EXTENT THAT THE EQUIPMENT OR MATERIAL
HAS BEEN PERMANENTLY INCORPORATED INTO A FACILITY
PRIOR TO TERMINATION. THE SEVERITY OF ARTICLE 26. MAY
BE PART OF THE AGENCY'S PLANNED NEGOTIATING FLEXIBILITY.

E. ARTICLE 30. CONSIDERATION SHOULD BE
GIVEN TO ADDING TO THE AGENCY'S TECHNICAL
CONCLUSION A STATEMENT REGARDING EACH NUCLEAR
FACILITY (OR MATERIAL BALANCE AREA) PER SE
AS WELL AS NUCLEAR MATERIAL, IN RECOGNITION
OF UNDERTAKINGS IN ARTICLES 1 AND
2. REGARDING FACILITIES.

F. ARTICLE 38. CONSIDERATION SHOULD BE GIVEN
TO EXPANDING THIS ARTICLE TO INCLUDE CASE
WHERE EXEMPTED NUCLEAR MATERIAL IS INTRODUCED
INTO ANY FACILITY, INDEPENDENT OF THE PRESENCE
OF OTHER NUCLEAR MATERIAL. THIS ALSO FOLLOWS
FROM FACILITIES UNDERTAKINGS.

G. ARTICLE 74(F). THIS IS ONE OF SEVERAL
INSTANCES WHERE REFERENCE TO FACILITIES HAS BEEN
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INTRODUCED BUT WITHOUT ADEQUATE ADJUSTMENT OF
OTHER ARTICLE. IN THIS INSTANCE THE DRAFT
FAILS TO INCLUDE A REQUIREMENT FOR SUBMISSION
OF REPORTS ON FACILITY STATUS BUT REQUIRES FACILITY
STATUS VERIFICATION UNDER THIS ARTICLE.

H. ARTICLE 76(A). AS NOTED PARA 4 ABOVE, THIS
ARTICLE MAKES NO PROVISION FOR ACCESS TO FACILITIES
WHERE NUCLEAR MATERIAL IS NOT RPT NOT REPORTED,
WHEREAS ARTICLE 71(A) HAS INTRODUCED RIGHT OF AGENCY
(NOT IN INFCIRC/153) TO VERIFY INFORMATION REGARDING
FACILITIES PER SE.

I. ARTICLE 92. AS NOTED PARA 4 ABOVE, MISSION
WOULD AGREE THAT THIS ARTICLE SHOULD BE AMENDED
TO REQUIRE NOTIFICATIONS OF TRANSFERS OUT OF STATE
OF SPECIFIED MATERIAL AND SPECIFIED EQUIPMENT, AS
ARTICLE 12(A) STATES.

J. ARTICLE 98.J. REFERENCES IN SUB-PARAS (A)(II)
AND (B) (II) TO NON-SAFEGUARDED (NON-PEACEFUL)
ACTIVITY SEEM INAPPROPRIATE IN VIEW OF

ARTICLE 1 UNDERTAKING.

6. IN LIGHT AGENCY SECRETARIAT INFORMAL REQUEST
FOR OUR COMMENTS, ADVISE WHETHER FOREGOING MAY BE
PROVIDED INFORMALLY TO THEM. ADVISE ALSO OF ANY
ADDITIONAL COMMENTS BY WASHINGTON AGENCIES TO BE
SIMILARLY PROVIDED SECRETARIAT. LABOWITZ

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